Supreme Court, U.S.
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IN THE
SUPREME COURT of the UNITED STATES

October Term, _____

Thomas B. Ferguson,
Petitioner

vs.

Phyllis F. Haney,
Respondent

On Petition for a Writ of Certiorari
To the Third Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Court of Appeals erred and infringed upon Petitioner's substantive and procedural right to due process of law when it affirmed the lower court's ruling that Petitioner's challenge to the validity of an inter vivos conveyance by deed was not cognizable in any court, state or federal?

II. Whether the Court of Appeals erred and infringed upon the Petitioner's fundamental rights to due process when it affirmed a lower court's order dismissing with prejudice the Petitioner's Amended Complaint on grounds that the district court lacked subject-matter jurisdiction of the Petitioner's claims?

III. Whether the Court of Appeals erred and infringed upon the Petitioner's right to due process of law when it refused to adjudicate the Petitioner's claims on the merits?

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IN THE
SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1999

Thomas B. Ferguson,
Petitioner

vs.

Phyllis F. Haney,
Respondent

Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Third Circuit

Petitioner, Thomas B. Ferguson, respectfully prays that a writ for certiorari issue to review the order of the United States Court of Appeals for the Third Circuit entered in this proceeding on November 9, 2000.

OPINIONS BELOW

The opinion and decision of the United States Court of Appeals affirming the district court's memorandum order of May 16, 2000 appears at Appendix A, and it is unreported. (App. A)

The decision of the U.S. Court of Appeals denying the timely filed Petition for Rehearing, i.e., its amended order of July 5, 2001, appears at Appendix B, and it is unreported. (App. B)

GROUNDS FOR JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The order of the United States Court of Appeals affirming the district court's order of May 16, 2000, (granting the defendant's motion for summary judgement and dismissing the plaintiff's claims with prejudice) was issued on November 9, 2000. The Court of Appeals denied Petitioners timely Petition for Rehearing in its amended order of July 5, 2001. The certified copy of the judgement was issued in lieu of a formal mandate on June 14, 2001.

The questions presented did not arise until Petitioner reviewed the Third Circuit Court of Appeals' opinion and judgement affirming the district court's order of May 16, 2000, granting the defendant's motion for summary judgement and dismissing the plaintiff's claims with prejudice.

Petitioner thereon sought rehearing and argued that the Court of Appeals had erred for numerous reasons and that its decision resulted in fundamental unfairness and a violation of the due process clause of the federal constitution.

The jurisdiction of the United States District Court for the Western District of Pennsylvania was invoked pursuant to 28 U.S.C. §1332(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

This case concerns the Fifth Amendment to the United States Constitution which provides in pertinent part, that "No person . . . shall be deprived of life, liberty, or property, without due process of law;..."

STATEMENT OF THE CASE

Plaintiff-Petitioner, Thomas B. Ferguson, a resident of East Palestine, Ohio is the only son of Helen Margaret Ferguson ("HMF"), who died on March 15, 1998, at eighty-nine years of age. Defendant-Respondent in this case, Phyllis F. Haney, is the only daughter of HMF, and a resident of Beaver Falls, Pennsylvania.

Plaintiff's initial complaint was filed on July 16, 1998. Plaintiff's amended complaint was filed on December 18, 1998; he brought suit in a diversity-based conversion action to nullify deeds executed and procured through the exertion of undue influence on the grantor, HMF, by her daughter and grantee, Defendant Haney.

Relief sought included all forms of equitable relief, nullification of the deeds, the restraining of Defendant from encumbering said property or conveying it to third parties, compensation for income derived from said properties, and costs.

Defendant Haney, as Executor of HMF's estate, never produced or filed the will written by HMF until after the federal suit was commenced, in August of 1998.

During deposition testimony in March and April 1999, Defendant Haney testified that she never saw the will until it was produced by her mother's attorney in March of 1998.

Plaintiff discovered through examination of medical records (Nurse's notes) that Defendant Haney was in the room when her mother signed the will making her daughter, Defendant Haney, her sole beneficiary. The nurse who created this record was a sworn witness to the will signing. The evidence did not come to light until almost one year after Petitioner's suit was originally filed.

Plaintiff filed a Petition for Writ of Mandamus pursuant to 18 U.S.C. §1651 and Rule 21(a) of the Federal Rules of Appellate Procedure on April 18, 2000; Petitioners requested immediate review of discovery orders limiting the scope and content of a non-party's deposition, and preventing the Petitioner from examining this witness as to evasive testimony given under oath. This Petition was summarily denied by the Third Circuit Court of Appeals on May 9, 2000, apparently on the basis that the order challenged was interlocutory in nature.

On October 1, 1999, the Defendant filed a Motion to Dismiss for Lack of Standing. Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss was filed on October 28, 1999. On November 18, 1999, the district court ordered both parties to submit pre-trial narrative statements. Plaintiff's Pre-Trial statement was timely filed on December 10, 1999; Defendant's statement was submitted on January 10, 2000, after Defendant obtained an extension of time to file said statement.

The district court judge placed the case on the trial list; his clerk informed the Plaintiff that he should be ready to proceed to trial with ten days' notice. A scheduled pre-trial conference was continued on February 3, 2000.

On February 9, 2000, the court denied Defendant's Motion to Dismiss; however, in the course of its opinion denying the motion, the judge made the ruling that the Plaintiff had abandoned specific claims for relief based on the judge's reading of Plaintiff's pre-trial narrative statement.

The court denied Defendant's Motion to Dismiss without prejudice to Defendant's right to renew the issue of lack of standing in a motion for summary judgement.

On March 2, 2000, the Plaintiff motioned for reconsideration of the order of February 9, 2000, and requested that discovery be re-opened if a summary judgement motion was to be entertained; Plaintiff objected to renewal of a motion to dismiss in the form of a motion for summary judgement.

Plaintiff in his Motion for Reconsideration of the Order of February 9, 2000, requested that it be revised to indicate that no dispositions on the merits of disputed material fact or legal contentions be made in the context of the court's denial of a motion to dismiss; that discovery be re-opened if and when a Rule 56 hearing was contemplated by the court; that the court refrain from dictating prior to trial what forms of recovery were available to Plaintiff; through its perusal of a pre-trial narrative statement prior to a Rule 16 conference; and that a non-specific motion to dismiss not be characterized as a motion for judgement on the pleadings.

Plaintiff's Motion for Reconsideration was denied on May 16, 2000. Defendant motioned for summary judgement on grounds that the Petitioner lacked standing to sue in this civil action, on March 7, 2000. Plaintiff filed his response, with supporting affidavit incorporated, to the Defendant's Motion for Summary Judgement on March 27, 2000. Defendant's Motion was granted on May 16, 2000, and Plaintiff's Amended Complaint was dismissed with prejudice.

Plaintiff's Notice of Appeal was timely filed on May 25, 2000.

Plaintiff appealed from orders denying the Plaintiff's Motion to Show Cause Why Default Judgement Should Not Be Entered, denying the Plaintiff's motion for reconsideration, denying the Plaintiff's motion to strike the affidavit of

Defendant, denying Plaintiff's motion for reconsideration of the order of February 9, 2000, and dismissing the Plaintiff's Amended Complaint with prejudice.

Plaintiff argued that the district court acted prematurely and erroneously in dismissing the Plaintiff's amended Complaint for lack of subject-matter jurisdiction, with prejudice. Plaintiff argued that the district court erred because it rendered a decision on the merits (i.e., dismissed with prejudice) pursuant to a challenge to subject-matte- jurisdiction.

Plaintiff argued that his claim was cognizable in a federal forum; that the court reversibly erred in attempting to limit the forms of relief available to Plaintiff prior to a trial on the merits, erred when it refused to sanction the Defendant for abuses of the discovery process, erred when it summarily refused to strike the affidavit of Defendant Haney (on grounds that it contained false statements) without affording the Plaintiff a hearing on this subject, and erred when it dictated the subject-matter of questions to be directed to a non-party deponent, denied the Plaintiff access to said witness by ordering her deposition to be concluded, and erred in denying the Plaintiff the right to further examine said witness. The Court of Appeals affirmed the judgement of the district court granting summary judgement to Defendant on November 9, 2000, and taxed costs against the Petitioner.

REASONS FOR GRANTING THE WRIT

I. The decision of the Third Circuit Court of Appeals conflicts with this Court's precedents and with settled law in the Third Circuit.

The Third Circuit Court of Appeals reversibly erred in affirming the district court's decision dismissing all of the Petitioner's claims with prejudice on grounds that it lacked subject-matter jurisdiction, and in holding that Petitioner's claims were not cognizable "in any court, state or federal." Opinion of the Third Circuit Court of Appeals, App. A, at 9.

It is well-settled that where a claim is enforceable in a state court of general jurisdiction, federal diversity jurisdiction can be assumed; The Petitioner's challenge to the validity of an inter vivos conveyance of property by deed was cognizable in state courts of general jurisdiction.

When a suit merely seeks to enforce a claim between parties enforceable in a state court of general jurisdiction, federal diversity jurisdiction will be assumed.

Petitioner had the right to challenge the validity of an inter vivos conveyance in a state court of general jurisdiction; therefore the diversity jurisdiction of a federal forum was properly invoked.

Petitioner in his Amended Complaint invoked the subject-matter jurisdiction of the district court based on the federal diversity statute, 28 U.S.C. §1332. The requisite elements of diversity jurisdiction were sufficiently alleged in his Amended Complaint, and the truth of these allegations as to citizenship and jurisdictional amount was never challenged by Respondent Haney (Defendant).

Defendant never submitted evidence to the district court of a defect in standing as determined by reference to the federal diversity statute.

The law of standing is federal; standing to bring suit in federal court is based on federal law, even in diversity cases based on state law claims. See Flast v. Cohen, 88 S. Ct. 1942 (1968); direct economic injury is a sufficient basis for standing. And see Blair v. Chicago, 26 S. Ct. 427 (1906). Plaintiff has pled that he was directly harmed in a palpable economic fashion by the conduct of the Defendant. The appellate court improperly relied on Wheeler (Wheeler v. Travellers Ins. Co., 22 F. 3d 534 (3rd Cir. 1994) in assessing plaintiff's right to file suit in a conversion-based diversity case. This is error. Plaintiff was never an interested bystander challenging the operation of a federal statute, or its constitutionality. The plaintiff in Wheeler failed to satisfy prudential requirements for standing in a federal question case because she sought to vindicate the rights of a third party, the United States. Prudential requirements have nothing to do with the elements of standing in diversity in a case in which the plaintiff is asserting his own legal rights and interests. The principle of Wheeler is not "directly applicable to this case;" it has nothing to do with this case. (App. A, at 6.)

Where a federal district court has diversity jurisdiction under 28 USCS §1332, it is unnecessary to discuss or determine whether it has jurisdiction on any other basis or under any other statute.

The Court of Appeals has also misconstrued the holding in Moore v. Graybeal. Graybeal stands for the proposition that if there is diversity of citizenship and the requisite amount in controversy, a federal court has jurisdiction to entertain a suit in favor of a claimant against a decedent's estate, so long as the court does not interfere with the probate proceedings or control of property in the custody of a state court. (843 F.2d 706 (3rd Cir. 1988)). And see: Markham v. Allen, 66 S. Ct. 296 (1946); Giardina v. Fontana, 733 F.2d 1047 (2d Cir. 1984).

Plaintiff in this conversion based diversity action sought relief in a federal forum (with jurisdiction of the subject-matter) that a state probate court could not have provided, including attorneys fees and expenses and the overturning of a transfer by deed made by a live grantor to defendant.

The federal district court which heard the Plaintiff's claims did not lack subject-matter jurisdiction to entertain his civil suit in diversity and has the power to provide the Plaintiff with the relief which he seeks. The practice of a gross fraud is a proper question of judicial cognizance, in a state court of general jurisdiction or in a federal forum. U.S. v. American Bell Telephone Co., 9 S. Ct. 90 (1988). There is no proceeding of record in a state court which precludes the Plaintiff from obtaining the relief sought by him in a federal forum, and it is within the federal court's equitable powers to grant the relief sought by Plaintiff. There is no probate exception to this forum's subject-matter jurisdiction over Plaintiff's suit in diversity. The district court can proceed to judgement and afford a suitable measure of redress to plaintiff. The diversity jurisdiction of a federal court may properly be invoked to adjudicate claims regarding cancellation of a fraudulently executed deed where the necessary parties are citizens of different states and the requisite jurisdictional amount exists. The real estate at issue is not now and has never been in possession or control of a state probate court.

Federal diversity jurisdiction can be exercised over challenged inter vivos transfers of decedent's property because a will contest is not an adequate remedy for property transferred before the testator died; such property is not an asset of the testator's estate. See McKibbon v. Chubb, 840 F.2d 1525 (10th Cir. 1988).

Helen Margaret Ferguson's will ("HMF's" will) did not convey to Defendant Haney or to anyone else a legally cognizable right to the property subject to claim in this suit, because said property was not held in the name of, and was not owned, by HMF at the time of her death. HMF did not

have the power to transfer an interest or right (certainly not a legally cognizable one) in property which she did not own at the time of her death to any third party, pursuant to the terms of her will.

Pennsylvania and Ohio law gives state courts of general jurisdiction the power to hear actions challenging inter vivos conveyances of property by deed. See 20 Pa. C.S.A. §711.

The standard for determining whether an action falls within the probate exception to a federal court's subject-matter jurisdiction is whether, under state law, the dispute would be cognizable only by a probate court. (Petitioner's challenge to the validity of the conveyance by deed was never cognizable by the probate court.) Community Ins. Co. v. Rowe, 85 F. Supp. 2d 800 (S.D. Ohio, 1994); Reinhardt v. Kelly, 164 F.3d 1296 (10th Cir. 1999); Rice v. Rice Foundation, 610 F.2d 471 (7th Cir. 1979); Lamnberg v. Callahan, 455 F.2d 1213 (2d Cir. 1972); Jones v. Harper, 55 F. Supp. 2d 530 (S.D. W.Va. 1999).

Federal courts have no jurisdiction over matters within the exclusive jurisdiction of state probate courts. The probate exception to the federal court's subject-matter jurisdiction does not apply since the instant action does not involve the disposition of probated estate assets. This probate-related action is cognizable because the federal court is not interfering with property in the state court's custody.

The federal court could not possibly disturb the finality of state probate proceedings because there has been no final order entered even with regard to assets now held in the decedent's estate. See George v. Glick, 856 F.2d 971 (7th Cir. 1988).

Subject-matter jurisdiction is determined with respect to circumstances at the time a complaint is filed; post-filing events are thus incapable of stripping a federal court of its properly conferred jurisdiction. See Ober v. Gallagher, -

U.S.- 23 L.Ed 829 (1876); Freeport-McMoran, Inc. v. KN Energy, Inc., -U.S.-, 112 L.Ed 2d 951 (1991); NRDC v. Texaco Refining and Marketing, Inc., 2 F.3d 493 (3rd Cir. Del. 1993). Federal jurisdiction depends on the state of affairs when the case begins; what happens later is irrevelant; later developments do not remove federal jurisdiction once it has been established. The question whether federal diversity jurisdiction exists under 28 USCS §1332 is determined by the pleadings. Smith v. Sperling, 77 S. Ct. 1112 (1977).

Nothing that has taken place in any court of general or exclusive jurisdiction precludes the plaintiff from contesting the validity of a conveyance by deed in a federal forum, or strips the plaintiff of his statutory standing to suit in diversity for redress of his injuries. There is no decree entered by any state probate court effecting distribution of properties subject to claim in this suit.

Plaintiff's claim to the contested property was not cognizable by the state's probate court because the property subject to his claim has never been and is not now in the control of the state probate court; it is not an asset of HMF's estate. The appellate court in its opinion went so far as to interpret language in a will in an attempt to immunize an executrix (who concealed the assets of her mother's estate) from a deed challenge. This is not good law. The probate exception to diversity jurisdiction does in fact preclude a federal court from interpreting the terms of a will. See Graybeal. The Court of Appeals also went radically far afield in holding that a residual clause in a will pertains to distribution of property not owned by a decedent at the time of her death. App. A., at A-7. Appellate interpretation of the terms of a will is not a tool which can be used to defeat subject-matter jurisdiction. Defendant in raising the defense relied on by the Court of Appeals necessarily admitted to working a gross fraud on the probate court in 1998 when she concealed the assets of her mother's estate; she stated for the record that the value of the estate was under $5,000 and fraudulently concealed her illegal conveyance of assets

worth approximately $3,000,000. Pennsylvania law most definitely permits a challenge to probate proceedings on grounds of extrinsic fraud.

Furthermore, the Third Circuit Court of Appeals has unanimously held that claims alleging conversion of the assets of a decedent are in personam actions against a defendant and not within the probate exception. See Graybeal.

There is no probate exception or doctrine of prior exclusive jurisdiction which prevents the Petitioner from invoking the federal court's diversity jurisdiction to set aside conveyances by deed or to maintain an in personam action against the defendant for conveyance of assets of the decedent.

Given the truthfulness of Petitioner's jurisdictional allegation, as sworn to in his affidavit, all pleading requirements were satisfied in this case. See Blair v. Chicago; Employees of Wausau v. Crown Cork & Seal Co., 905 F.2d 42 (3rd Cir. 1940).

As emphasized in Graybeal, assuming that there is diversity of citizenship and the requisite amount in controversy, a federal court has jurisdiction to entertain a suit in favor of a claimant even against a decedent's estate, so long as the court does not interfere with property in the custody of a state court. No such interference has taken place.

Furthermore, any decree of probate procured by fraud on the court is a nullity and is not protected by statutes of limitation. When the jurisdiction or judgement of a state probate court is attacked on grounds of fraud, federal jurisdiction is proper. See Payne v. Hook, 7 Wall. (74 U.S.) 425, 19 L.Ed 260 (1868); Bessler v. Arrowwood, 500 F.2d 138 (8th Cir. 1974). In Payne, plaintiff sued the administrator of her brother's estate, charging that the administrator was guilty of gross misconduct, that he had made false statements to the probate court and had withheld the true

inventory of the decedent's property. The Supreme Court sustained federal jurisdiction.

Jurisdiction of the orphan's court is limited to the estate of which decedent died seized, and the probate court lacks jurisdiction to determine ownership of property not in decedent's possession at the time of her death. In Re Crisswalt's Estate, 5 A.2d 577 (1939).

The appellate court did not and could not attempt to explain how an inter vivos conveyance which took place before the death of testatrix could be challenged through appeal of a probate decree.

Dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits and thus should be ordered without prejudice. Figueroa v. Buccaneer Hotel, Inc., 188 F.3d 172 (3rd Cir. 1999), reh. den. 202 F.3d 253. If a case over which the district court lacks subject-matter jurisdiction was originally filed in a federal court, it must be dismissed without prejudice; if it was removed from state court, it must be remanded. In Re Orthopedic 'Bone Screw' Products Liability Litigation, 132 F.3d 152 (3rd Cir. 1997); Englert v. City of McKeesport, 872 F.2d 1144 (3rd Cir. 1989).

II. The decision of the Court of Appeals should be reviewed because it erodes public confidence in the integrity of the judicial process.

Defendant Haney was entitled to move for summary judgement on the standing issue only if she demonstrated to the district court that the jurisdictional allegations as pled by Petitioner were untruthful. She made no such challenge to the truthfulness of the jurisdictional allegations; i.e., she never controverted the truth of statements made in the pleadings and in Plaintiff's sworn affidavits as to diversity of citizenship and jurisdictional amount.

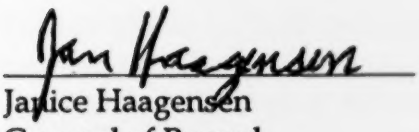
Plaintiff has been stripped of his constitutional right of access to the courts. The Court of Appeals has erred and blinded itself to the equities in its conclusion that Plaintiff lacked standing to sue in diversity in a federal forum, or in any forum, and has erred in its refusal to address on their merits all of the substantive challenges to district court rulings which were raised in Plaintiff's appeal; i.e., the district court's refusal to sanction the defendant for her abuses of the litigation process; its refusal to strike Defendant's affidavit on the ground that it contained false statements; its premature conclusion of discovery and deposition of a material witness to a fraud; its attempt to limit available forms of relief prior to a trial.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Dated: October 2, 2001.

Respectfully submitted,



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APPENDIX

APPENDIX A	MEMORANDUM OPINION AND ORDER OF THE THIRD CIRCUIT COURT OF APPEALS, OF NOVEMBER 9, 20000
APPENDIX B	AMENDED ORDER OF THE U.S. COURT OF APPEALS OF JULY 5, 2001 DENYING THE PETITION FOR REHEARING.

UNREPORTED / NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1682

THOMAS B. FERGUSON,
Appellant

v.

PHYLLIS F. HANEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civ. No: 98-cv-01223)
District Court Judge: The Honorable William J. Standish

Submitted Under Third Circuit LAR 34.1(a)
October 25, 2000

Before: BECKER, SCIRICA, and FUENTES, Circuit Judges

(Opinion Filed: November 9, 2000)

MEMORANDUM OPINION OF THE COURT

FUENTES, Circuit Judge:

Alleging fraud and undue influence, Thomas B. Ferguson ("Thomas") brought suit to invalidate deeds that transferred real property from his mother, Helen Margaret Ferguson ("Ms. Ferguson"), to his sister, Phyllis Ferguson Haney ("Phyllis"). The District Court granted summary judgement to Phyllis, concluding that Thomas lacks standing to sue since an invalidation of the deeds would simply cause the underlying real property to revert to Ms. Ferguson's estate, where Phyllis would obtain the property by bequest. We agree, and therefore affirm the grant of summary judgement.

I.

In 1988 and 1993, Ms. Ferguson executed deeds that transferred interests in real property located in Chippewa Township, Beaver County, Pennsylvania to her daughter, Phyllis. In 1990, while admitted as a patient to Beaver Valley Medical Center, Ms. Ferguson signed a will making Phyllis her sole heir. Thomas alleges that the deeds and the will were obtained through fraud and undue influence.

Ms. Ferguson died on March 31, 1998, and on August 31, 1998, her will was admitted to probate by Carol Ruckert Fiorucci, Register of Wills of Beaver County, Pennsylvania. The second paragraph of Ms. Ferguson's will states that:

> I give, devise and bequeath all the rest, residue and remainder of my estate, my real, personal and mixed, of whatsoever nature or kind and wheresoever the same may be situate to my daughter, PHYLLIS F. HANEY, if she survives me.

The will made no provision for Thomas.

On July 18, 1998, Thomas instituted this action, seeking to nullify the deeds that transferred real property from Ms. Ferguson to Phyllis on the grounds that those deeds were allegedly procured through undue influence. Discovery followed, including depositions of Phyllis and others.

On October 3, 1999, Phyllis filed a motion to dismiss, arguing that Thomas had lost his standing to sue on August 31, 1999, because he failed to contest Ms. Ferguson's will before Pennsylvania's one-year statute of limitations had run. Phyllis maintained that because Ms. Ferguson's will left all her property to Phyllis, any success of Thomas in voiding the deeds would simply return the underlying real property to Ms. Ferguson's estate, where Phyllis would obtain the property by bequest. Thus, lacking financial stake, the proceedings were essentially advisory. Thomas opposed the motion to dismiss, arguing that standing existed.

The District Court denied the motion to dismiss on February 10, 2000, but did so "without prejudice to [Phyllis's] right to renew the lack of standing in a motion for summary judgement." Thereafter, Phyllis presented a motion for summary judgement, supported by affidavits and exhibits, and, after briefing, the District Court granted the summary judgement, agreeing with Phyllis that Thomas lacked standing to sue. Thomas appeals. We exercise plenary review. See Trump Hotels and Casino Resorts, Inc. v.Mirage Resorts, Inc., 140 F.3d 478 (3d Cir. 1998) (motion to dismiss for lacking of standing).

II.

When the last will and testament of a decedent has been admitted to probate, the proper means for challenging that admission is by an appeal from probate. See In re Interest of Roy, 620 A.2d. 1172, 1173 (Pa. Super. Ct. 1993). Under Pennsylvania law, there is a one-year statute of limitations for an individual to appeal a probate decree. 20 Pa. Cons. Stat. §908(a) (2000) ("Any party in interest who is aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree").

The probate decree was admitted on August 31, 1998. Thomas did not file an appeal within one year of that decree – in other words, before August 31, 1999. Thus, the statute of limitations on appealing Ms. Ferguson's will has run.

The statute of limitations on appealing a probate decree on a will is mandatory. A lawsuit in state or federal court that seeks to recover property related to a decedent does not toll or stop the statute of limitations. See Dempsey v. Figura, 542 A.2d 1388, 1390-91 (Pa. Super. Ct. 1988) (an equity action to retrieve bonds allegedly received under undue influence does not toll the statute of limitations, even though the equity action was filed within the one-year statute of limitations). An untimely appeal of a register's decree admitting a will to probate is permitted "only ... where there has been a fraud on the court of the Register of Wills." Id.

Fraud justifying an untimely appeal exists where an individual was unaware of the admission of the will during the time available to file an appeal. Where an individual was aware of the probated will and the attendant

circumstances, the individual is obligated to challenge the will within the one-year statutory period. See Estate of Colluci, 492 A.2d 1155, 1156 (Pa. Super. Ct. 1985).

In the present case, the record clearly shows that Thomas knew of the existence of the will before August 31, 1999. He acknowledged as much in his Amended Complaint for Cancellation of Deed, filed on December 18, 1998.
Therefore, as a matter of state law, the will cannot be challenged.[1]

III.

Federal courts are courts of limited jurisdiction, empowered to hear cases only as provided for under Article III of the Constitution and congressional enactments pursuant thereto. Employers Ins. Of Wausau v. Crown Cork & Seal Co., Inc., 905 F.2d 42, 45 (3d Cir. 1990). To establish standing, a plaintiff's "injury must be concrete and capable of being redressed by the court should the plaintiff prevail on the merits .... [A] plaintiff[] [must] have a 'personal stake' or 'interest' in the outocme of the proceedings[.]" Wheeler v. Travelers Ins. Co., 22 F.3d 534, 537 (3d Cir. 1994) (citations omitted).

In Wheeler, the plaintiff, Mrs. Wheeler, brought suit against her insurance carrier for its denial of her claim for no-fault benefits where Medicare paid the medical expenses for which she sought recovery. Under relevant statutes, she

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[1]Thomas argues that that statute of limitations would not run until the property underlying the deeds is inventoried. Of course, he does not cite any case law for this assertion, and his argument goes directly against the language of the statute, which provides that the statute of limitations runs from the "decree." 20 Pa. Cons. Stat. §908(a) (2000).

was obliged to remit any recovery from the defendant insurance carrier to Medicare. Given these circumstances, the Court stated that:

> Wheeler does not have constitutional standing ... [S]he concedes that she 'will be obliged to remit any payment she now receives from Travelers to Medicare' .... Thus, Wheeler never has had anything to gain from this lawsuit. Therefore, she does not have standing for, as the Supreme Court [has stated,] ... '[t]he necessity that the plaintiff who seeks to invoke judicial power stand to profit in some personal interest remains an Art. III requirement. A federal court cannot ignore this requirement without overstepping its assigned role in our system of adjudicating only actual cases and controversies.'

Id. at 538 (citations and footnotes omitted).

The principle of Wheeler is directly applicable to this case. Thomas has nothing to gain from this suit since, even if successful in invalidating the deeds, the property will simply revert back to Ms. Ferguson's estate and then, by bequest, be transferred to Phyllis pursuant to Mrs. Ferguson's unchallengeable will. Therefore, as the District Court correctly held, Thomas has no personal stake or interest in this suit and lacks standing to sue in federal court.[2]

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[2] In his appellate brief, Thomas attempts to raise numerous other issues, including allegations that the District Court should have sanctioned Phyllis for discovery violations, that the District Court should have stricken certain affidavits, that the District Court prematurely dismissed his case without

Thomas tries to attack this conclusion with a host of arguments. First, he argues that when Ms. Ferguson's will was executed, it did not contemplate the properly which Ms. Ferguson did not possess at the time of death. According to Thomas, if the deeds are nullified, the property would go back to the estate, but would have to be divided without reference to the terms of the will. This argument, however, contradicts the plain language of the will, which applied to "all the rest, residue and remainder of [Ms. Ferguson's] estates, real personal and mixed, of whatsoever nature or kind and wheresoever the same." Thomas's argument also misconceives the nature of a property deed. The will may not have covered the underlying real property at the time Ms. Ferguson died, but if the needs are nullified, the real property reverts to the estate as if Ms. Ferguson had held the property before her death, thus bringing the property within the ambit of the will.

Thomas also argues that federal courts have equitable power to override Ms. Ferguson's will. We disagree. Federal courts have no jurisdiction to probate a will or administer an estate. Moore v. Graybeal, 843 F.2d 706, 709-10 (3d Cir. 1988).

Thomas argues that federal courts have jurisdiction over a diversity case even if a state controls probate proceedings. See id. at 709. This argument misses the point. Pennsylvania law does not allow a challenge to Ms. Ferguson's will, and that fact renders this suit meaningless.

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further discovery, and that the District Court improperly limited the subject matter of certain depositions. Since we conclude that the District Court properly found that Thomas lacked standing to sue, we do not address any of these contentions.

Next, Thomas argues that he is seeking monetary damages from the deprivation of property by Phyllis through the deeds, and does not actually want the property back. Therefore the Court can grant him relief. A similar argument was rejected in Moore as infringing on state probate proceedings:

> We are not impressed with the concept that granting [plaintiff] relief would not interfere with the probate proceedings if done by an award of damages rather than by an order to the executor directing distribution of the estate. Either way the substance is the same [as an attack on the will itself].

843 F.2d at 710. In this case, Pennsylvania gives probate courts exclusive jurisdiction. Ostrof v. Yaslyk, 419 Pa. 183, 186 (1965). Allowing Thomas to recover damages under the deeds is effectively the same as allowing Thomas to rewrite Ms. Ferguson's will, a will that is not subject to challenge in state court. See Moore, 843 F.2d at 710.

Finally, Thomas argues that the District court erred in considering objections to standing on the motion for summary judgement, where it had dismissed such objections without prejudice on the motion to dismiss. He cites Aerolinea Argentinas v. United States, 77 F.3d 1564, 1572 (Fed. Cir. 1996), as support. That case, however, states only that dismissal for lack of jurisdiction should be without prejudice. It says nothing about what may be considered on summary judgement. We believe that standing may be addressed on summary judgement. See Fed. R. Civ. P. 56(c).

Admittedly, when the District Court granted summary judgement, it dismissed Thomas's claims with prejudice. In some contexts that might have been an error

since it would prevent Thomas from brining his claims elsewhere. See Aerolinea Argentinas, 77 F.3d at 1572 (dismissal for lack of jurisdiction should be without prejudice). Here, however, it is clear that Thomas will not be able to challenge the will or the deeds in any court, state or federal. Therefore, there was no error.

For all the reasons above, we will affirm the District Court's grant of summary judgement to Phyllis.

TO THE CLERK OF COURT:
Kindly file the foregoing Opinion

/s/ Julio M. Fuestes
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1682

THOMAS B. FERGUSON,
Appellant

v.

PHYLLIS F. HANEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civ. No: 98-cv-01223)
District Court Judge: The Honorable William J. Standish

Submitted Under Third Circuit LAR 34.1(a)
October 25, 2000

Before: BECKER, SCIRICA, and FUENTES, Circuit Judges

JUDGEMENT

This cause came to be heard on record from the United States District Court for the Western District of Pennsylvania and was submitted under Third Circuit LAR 34.1(a) on October 25, 2000.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the judgement of the said District court entered May 18, 2000, be, and the same is hereby AFFIRMED. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Gloria A. Colena (sp)

Dated: November 9, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

June 25, 2001

No. 00-1682

THOMAS B. FERGUSON,
Appellant
v.
PHYLLIS F. HANEY

United States District Court for the Western District of Pennsylvania (Pittsburgh)
D.C. Civ. No: 98-cv-01223

Present: Chief Judge BECKER, SLOVITER, MANNSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO & FUENTES, Circuit Judges

/s/ Charlene Crisden
Charlene Crisden
267-299-4923

ORDER

The foregoing motion for clarification is granted. The Order of June 5, 2001 is amended to include the following:

The petition for hearing having been submitted to all circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court:

/s/ John M. Fuentes
Circuit Judge

Dated: Jul 05 2001
CLC/cc: JSH/JLC

(2) Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE
SUPREME COURT of the UNITED STATES

October Term, _____

Thomas B. Ferguson,
Petitioner

vs.

Phyllis F. Haney,
Respondent

On Petition for a Writ of Certiorari
To the Third Circuit Court of Appeals

SUPPLEMENTARY APPENDIX

Janice Haagensen
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12 pp

SUPPLEMENTARY APPENDIX

APPENDIX A	MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA OFMAY 16, 20000
APPENDIX B	ORDER OF THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING THE PETITION FOR REHEARING AND THE MOTION FOR ORAL ARGUMENT OF MAY 11, 2001.

IN THE UNITED STATS DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS B. FERGUSON	)	
	)	
Plaintiff	)	
v.	)	Civil Action No. 98-1223
	)	
PHYLLIS F. HANEY	)	
	)	
Defendant	)	

MEMORANDUM ORDER

I

In this civil action, plaintiff, Thomas B. Ferguson, assets a cause of action for undue influence against d4efendant, Phyllis F. Haney. Plaintiff requests the following: (1) a decree rendering several deeds that transferred interests in real property from Helen Margaret Ferguson (Ms. Ferguson), the mother of the parties, to defendant "null and void and of no effect;" (2) an injunction preventing defendant from transferring "to third parties ... any of the property, or disposing in any fashion of the estate described in [the] deeds, or in any manner encumbering the same;" (3) an order directing defendant to pay plaintiff any consideration received in exchange for any transfer of plaintiff's "legitimate interest in any portion of the property;" and (4) an accounting for any rents and income received in connection with the property.[1] (Amended

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[1] Plaintiff also requests court costs.

Plaintiff also states that "[b]ecause Defendant Haney induced [Ms. Ferguson] to give her cash, checks, accounts and other good and valuable property by means of undue influence,

Comp. At 9-10). Presently, before the court is defendant's motion for summary judgement, whereby defendant moves for dismissal of plaintiff's amended complaint because plaintiff has lost standing to assert his claims.

II

The following facts are undisputed:

In 1988 and 1993, Ms. Ferguson executed deeds that transferred interests in real property located in Chippewa Township, Beaver County, Pennsylvania to defendant. On March 15, 1998, Ms. Ferguson died.

On August 31, 1998, the last will of Ms. Ferguson was admitted to probate by the decree of Carol Ruckert Fiorucci, Register of Wills of Beaver County, Pennsylvania. The second paragraph of Ms. Ferguson's will provides as follows:

> I give, devise and bequeath all the rest, residue and remainder of my estate, real, personal and mixed, of whatsoever nature of kind and wheresoever the same may be situate to my daughter, PHYLLIS F. HANEY, if she survives me.[2]

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with the intent to defraud Plaintiff, Plaintiff now claims all such sums and property as the fruit of the aforesaid acts." (Amended Comp. at 10). However, as the court noted in its Memorandum Order dated February 9, 2000, plaintiff abandoned any claim for relief premised upon the allegations set forth in that statement. (Memorandum Order at 1 n.1).

[2] By reference to the first paragraph of Ms. Ferguson's last will, "the rest, residue and remainder of [her] estate" is comprised of the property of Ms. Ferguson that remains after

(D. Ex.2). Plaintiff is not designated as a beneficiary under the will.

No one has appealed the probate decree.

III

A

Defendant indicates that dismissal of plaintiff's claim is proper on the ground that plaintiff once had but no longer has standing to assert his claim. Although defendant's motion is couched in terms of standing, the essence of defendant's argument is that plaintiff's claim is moot because of events that have occurred subsequent to the filing of plaintiff's complaint. (See Br. At 10-11).

The court will discuss standing and mootness because the concepts are closely related. However, the court will consider defendant's argument as premises upon the mootness of plaintiff's claim.

B

Article III of the United States Constitution limits the jurisdiction of federal courts to cases and controversies, and "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). "[T]he irreducible constitutional minimum of standing contains three elements[:]" (1) the plaintiff must

---

debts, funeral expenses, medical expenses and taxes are paid. (D. Ex.2). In the event that defendant would have predeceased Ms. Ferguson, two of Ms. Ferguson's grandchildren were to take "the rest, residue and remainder of [Ms. Ferguson's] estate." Id.

have suffered an injury-in-fact that is concrete and particularized, as well a actual or imminent; (2) the plaintiff's injury-in-fact must have been caused by, or be fairly traceable to, the complained of conduct; and (3) it must be likely that a favorable court decision will redress the plaintiff's injury. Lujan, 504 U.S. at 560.

Mootness is also an "essential and unchanging part" of the Article III case-or-controversy requirement. Ruocchio v. United Trasp. Union, Local 60, 181 F.3d 376, 385 n.11 (3d Cir. 1999) (citation omitted). Mootness and standing are related concepts; indeed, "[m]ootness has been described as representing 'a time dimension of standing requiring that the interests originally sufficient to confer standing persist throughout the suit.'" Ruocchio, 1818 F.3d at 385 n.11 (citation omitted).

Mootness "asks whether a party who has established standing has now lost it because the facts of her case have changed over time." Artway v. Attorney Gen. Of State of New Jersey, 81 F.3d 1235, 1246 (3d Cir. 1996). "'[T]he central question in mootness inquiries is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." Artway, 81 F.3d at 1246 (citations omitted). In other words, the central question in mootness inquiries is "whether the decision of the dispute continues to be justified by sufficient prospect that it will have impact on the parties." Ruocchio, 181 F.3d at 383 (citation omitted).

Defendant concedes that plaintiff had standing to assert his claim when he filed his complaint on July 16, 1998. (Br. At 11). However, defendant asserts that events occurring subsequent to the filing of plaintiff's complaint have resulted in the mootness of plaintiff's claim.

Specifically, defendant "has no current remedy" and "can no longer benefit from this suit" because plaintiff has not and cannot successfully contest the admission of Ms. Ferguson's will to probate, a will pursuant to the terms of which defendant, as sole primary beneficiary, has obtained, independent of the deeds, a legally cognizable right to all of the property that is subject to plaintiff's claim.

It is not disputed that the decree admitting Ms. Ferguson's will to probate has not been appealed. It is clear that, under Pennsylvania law, the one-year statute of limitations period for an individual timely to appeal the register's probate decree has run. 20 Pa. C.S.A. §908(a) (stating that "[a]ny party in interest who is aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree ...").

An exception to the one-year statute of limitations exists under Pennsylvania case law. The exception, a narrow one, permits an otherwise untimely appeal of a register's decree admitting a will to probate "only ... where there has been a fraud on the court or the Register of Wills." Dempsey v. Figura, 374 Pa. Super. 347, 351, 542 A.2d 1388, 1390-91 (1988) (citations omitted).

Plaintiff, aware that the decree admitting Ms. Ferguson's will to probate was not timely appealed, attempts to invoke the narrow exception and raise the specter of an appeal of the decree. Plaintiff states as follows:

> Defendant, in her Brief, has made the mysterious statement that the Plaintiff "can never be made whole." Defendant appears at this point to contemplate a confession that the

> deeds in question were executed through the working of a fraud and the operation of undue influence on the grantor. Such a confession would not insure a victory in a state court. The implicit admission of a fraud worked on the court is lethal to this argument. Any probate order can be opened if a fraud has been worked on the court. An admission that Defendant's hands were unclean and/or that she swore falsely in her answer would not assure her of victory in a probate court.

(Dismissal Br. At 4) (emphasis in original).[3]

Plaintiff's attempt fails for several reasons. First, defendant has argued that the narrow exception is available only in cases involving forgery and that, even if exception were otherwise available, the statute of limitations would not be tolled because plaintiff knew or should have known of any actionable fraudulent conduct. Plaintiff does not oppose either argument. Second, plaintiff completely misunderstands defendant's position. Nowhere does defendant suggest that she is admitting to conduct that she previously denied in her answer. Instead, defendant is assuming, for purposes of her motion, that plaintiff will prevail on the merits of his claim. Third, even if defendant were admitting to conduct that she previously denied in her answer, plaintiff has failed to explain how this "admission" would amount to fraud on the court or how this "fraud" is relevant to a register's decree admitting a will to probate.

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[3] Plaintiff incorporates in his arguments in opposition to defendant's motion to dismiss into his brief in opposition to defendant's motion for summary judgement. (Br. At 4).

In light of the foregoing, the court concludes that defendant's argument has merit to the extent that plaintiff has not and cannot successfully contest the admission of Ms. Ferguson's will to probate, a will pursuant to the terms of which defendant, as sole primary beneficiary, has obtained, independent of the deeds, a legally cognizable right to all of the property that is subject to the present action independent of the deeds at issue. Thus, the court turns to consider whether, as a result, plaintiff "has no current remedy" and "can no longer benefit from this suit."

In opposition to this aspect of defendant's argument, plaintiff states only that he is entitled to rely upon the allegations of his amended complaint and that such allegations suffice to show that he can benefit from this suit. (See, e.g., Br. At 2). Plaintiff has cited no authority supporting his contention that he may oppose defendant's motion for summary judgement by relying solely upon the allegations of his amended complaint. Given that the motion currently before the court is a motion for summary judgement, the court rejects plaintiff's reliance on the allegations of his amended complaint. See Fed. R. Civ. P. 56; Pub. Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 117 (3d Cir. 1997) (stating that "[p]laintiffs must have standing at all stages of the litigation and they ear the burden of proving it 'with the manner and degree of evidence required at the successive stages of the litigation.'").

Thus, plaintiff has not endeavored to explain how any of the four forms of requested relief would redress his alleged injury or how the court could provide any of the relief that he requests when the terms of Ms. Ferguson's will give defendant a legally cognizable interest in the property

transferred by the deeds.[4] As a result of the foregoing, the court concludes that a decision on the merits of plaintiff's claims will have no impact on the parties and that the admission of Ms. Ferguson's will to probate has forestalled any occasion for meaningful relief that would address plaintiff's alleged injury. As a result, the court will grant defendant's motion.

IV

AND NOW, this 16th day of May, 2000, in accordance with the foregoing, it is hereby ORDERED as follows:

1. The motion of the defendant, Phyllis F. Haney, for summary judgement on the claim asserted against her in the amended complaint of plaintiff, Thomas B. Ferguson, is granted.

2. The complaint of plaintiff is dismissed with prejudice.

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[4] The court notes that plaintiff has not presented any evidence indicating the existence of prior transfers of the property or rents and income derived from the property, evidence relevant to the third and fourth remedies that he has requested. See discussion supra Part I.

3. The Clerk shall mark the case closed.

/s/ William L. Standish
William L. Standish
United States District Judge

cc: Janice Haagensen, Esq.
349 New Road
Enon Valley, PA 16120

J. Lauson Cashdollar, Esq.
640 Fourth Street
Beaver, PA 15009

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 11, 2001

No. 00-1682

THOMAS B. FERGUSON,
Appellant
v.
PHYLLIS F. HANEY

United States District Court for the Western District of Pennsylvania (Pittsburgh)
D.C. No. 98-cv-01223

Present: Chief Judge BECKER, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO & FUENTES, Circuit Judges

Motion by Appellant Pursuant to Rule 27 for Oral Argument Regarding The Necessity for Timely Disposition of Appellant's Petition for Rehearing.

/s/ Charlene Crisden
267-299-4923

*Petition for Rehearing was sent on 11/24/00.

ORDER

The foregoing Petition for rehearing filed 11/22/00, and the motion for oral argument regarding the need for disposition filed May 10, 01, are both denied.

/s/ John M. Fuentes
Circuit Judge
Received and Filed
6-5-01, Marcia M. Waldron, Clerk

Date: June 05, 2001
CLC/CS: JJH, JLC